

REMARKS

Claims 1, 2, 5-8, 11-19, 21 and 22 are pending in the present application. In the foregoing amendments, claims 1 and 5-6 have been amended, and new claims 23-24 have been added. Support for these amendments can be found in the specification and claims of the application as filed. No new matter has been added by these amendments.

Applicant respectfully requests entry of the foregoing amendments and reconsideration of the application in light of the amendments above and the remarks below.

Claim Rejections under 35 U.S.C. § 103(a)

In the Office Action, the Examiner rejected claims 1, 2, 5 and 6 under 35 U.S.C. §103(a) as being unpatentable over Miyoshi et al. (U.S. Publication No. 2003/0022629 A1) in view of Dobson (U.S. Patent No. 6,650,643) and in further view of Feuerstein et al. (U.S. Patent No. 6,141,565). The Examiner also rejected claims 15-17 under 35 U.S.C. §103(a) as being unpatentable over Miyoshi et al. in view of Dobson and in further view of Andersson et al. (U.S. Patent No. 6,519,461).

Independent claim 1, as amended, recites: “receiving a current transmission at a current data rate for a current transmission interval; detecting an average throughput for the data transmission and reflective of the current transmission; comparing the detected average throughput against a threshold throughput, wherein the threshold throughput is based on a maximum supported average data rate; and signaling the transmission source to stop the data transmission if the detected average throughput exceeds the threshold throughput” (emphasis added). Applicant submits that claim 1 is not taught or suggested by the cited references, alone or in combination, and is therefore allowable. Applicant respectfully requests that the rejection of claim 1 be withdrawn.

Dependent claims 2, 5-6, and 15-17 each depend from independent claim 1, and are allowable as well. Applicant respectfully requests that the rejections of these claims be withdrawn.

Allowable Subject Matter

In the Office Action, claims 7-8, 11-14, 18-19, 21 and 22 were allowed. Applicant thanks the Examiner for the indication of allowable subject matter.

New Claims 23-24

New claims 23-24 recite features analogous to those found in allowed claims 7 and 11, respectively, and are therefore also allowable.

Support for claims 23-24 can be found in the specification and the claims, as originally filed, and its particular support for “computer program product” and “computer-readable medium” can be found at page 17, lines 4-15.

Furthermore, Applicant submits that claims 23-24 meet the statutory requirements of 35 U.S.C. § 101. Claims 23-24 recite a computer-readable medium encoded with a computer program product, thereby defining a structural and functional interrelationship between the computer program and the medium that permits the computer program’s functionality to be realized. *In re Beauregard*, 35 USPQ2d (BNA) 1383, 53 F.3d 1583 (Fed. Cir. 1995).

**REQUEST FOR ALLOWANCE**

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: 02/16/2007

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